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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JERRY HANCOCK,

Plaintiff and Appellant,

v.

MATT CAMPBELL et al.,

Defendants and Respondents.

2d Civ. No. B300076  
(Super. Ct. No. 56-2018-  
00506816-CU-MC-VTA)  
(Ventura County)

In 2013, Jerry Hancock and CATCO Gaming, Inc. (CATCO) entered into a stock purchase agreement which, among other things, granted Hancock a security interest in CATCO's assets. After CATCO breached the agreement, Hancock obtained a \$1,850,785 judgment against the corporation. CATCO's corporate status was suspended shortly after MSC Gaming, Inc. (MSC) was formed in 2015.

Hancock claims MSC, Matt Campbell (MSC's chief executive officer (CEO)) and a number of other defendants

“looted” all of CATCO’s assets. His first amended complaint (FAC) alleges causes of action for (1) successor corporation liability against MSC, (2) Code of Civil Procedure section 187 relief,<sup>1</sup> (3) creditor’s suit against third party (MSC) and (4) enforcement of security interest. MSC and Campbell (collectively “respondents”) demurred to each cause of action. The demurrer to the first three causes of action was sustained with leave to amend. The demurrer to the fourth cause of action was sustained without leave to amend. Hancock did not file an amended complaint. At respondents’ request, the court dismissed the action against them with prejudice.

Hancock appeals only the dismissal of his causes of action for successor company liability and creditor’s suit against third party. Hancock contends the trial court erred by concluding the FAC lacks sufficient facts to support these causes of action. We affirm the dismissal of Hancock’s successor company liability claim but reverse the dismissal of the creditor’s suit cause of action against MSC. The FAC does state a claim under that theory, but only as to MSC. We affirm the entire judgment as to Campbell.

#### PROCEDURAL AND FACTUAL BACKGROUND

The FAC alleges Campbell was the general manager of CATCO, a suspended corporation formerly located in Chatsworth. CATCO provided gaming products to casinos and casino operators. Campbell is now the CEO of MSC, which conducts the same type of business in Simi Valley. The FAC alleges respondents and other defendants “participated in the wholesale looting of CATCO, the result of which was that MSC became a

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure.

virtual continuation of CATCO, and became, . . . the successor corporation to CATCO in that, among other things it had assets of CATCO pilfered for no consideration or insufficient consideration, it had the same management staff as CATCO, and serviced the same customers as CATCO with products that were identical to CATCO products.”

More specifically, the FAC alleges that Kevin Thornton (a former CATCO sales manager and current MSC sales manager), Crystal Farias, Tyler Anderson (CATCO’s owner and CEO) and Chris Anderson (CATCO’s chief operating officer) conspired to sell CATCO’s assets to unknown third parties; that Kelli Anderson (CATCO’s secretary/treasurer) and Campbell stole one or more computers containing all of CATCO’s historical, proprietary and trade secret information; that Kelli Anderson took at least \$18,000 from CATCO; and that MSC, Campbell, Thornton and Blaise Verdi (a former CATCO sales manager and current MSC secretary) transferred to MSC a \$150,000 contract between CATCO and Hollywood Park Casino.

The trial court overruled respondents’ demurrer on grounds of uncertainty, but sustained the demurrer to the first three causes of action with leave to amend. (See § 430.10, subd. (e).) The court determined “[i]nsufficient facts are stated to support a claim for Successor Corporation. Plaintiff must plead and prove that the debtor corporation’s assets were transferred to the successor for little or no consideration. Plaintiff has not alleged sufficient facts to support the position that assets were transferred for little or no consideration.”

The trial court also concluded “[i]nsufficient facts are stated to support the claim of Third Party Creditor suit. [As] Defendant correctly notes, the allegations in the [FAC] are insufficient to

entitle Plaintiff to create a lien against MSC's business and property." Hancock chose not to amend, and the court granted respondents' motion to dismiss the action with prejudice pursuant to section 581, subdivision (f)(2).<sup>2</sup>

## DISCUSSION

### *Standard of Review*

Where, as here, "a demurrer is sustained *with* leave to amend but [the] plaintiff elects not to amend, it is presumed on appeal that the complaint states as strong a case as is possible." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2019) ¶ 8:136.3e, p. 8-109.) "The judgment of dismissal must be affirmed if the unamended complaint is objectionable on any ground raised by the demurrer." (*Ibid*; *Holcomb v. Wells Fargo Bank, N.A.* (2007) 155 Cal.App.4th 490, 495-496 (*Holcomb*); *Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 457 (*Otworth*).)

Hancock's appeal is limited to the dismissal of his successor corporation and third party creditor liability causes of action. Our task, therefore, is to review the allegations supporting those claims and to determine if any of the grounds raised in respondents' demurrer apply. (*Holcomb, supra*, 155 Cal.App.4th at pp. 495-496; *Otworth, supra*, 166 Cal.App.3d at p. 458.) "[W]e do not consider the possibility that any defects in [the claims]

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<sup>2</sup> Section 581, subdivision (f)(2) "gives the defendant the right to obtain a court order dismissing the action with prejudice once the court sustains a demurrer with leave to amend and the plaintiff has not amended within the time given." (*Parsons v. Umansky* (1994) 28 Cal.App.4th 867, 870; *Cano v. Glover* (2006) 143 Cal.App.4th 326, 329-330.)

could be cured by amendment . . . .”<sup>3</sup> (*Ibarra v. California Coastal Com.* (1986) 182 Cal.App.3d 687, 692; *Holcomb*, at p. 496.)

### *Successor Corporation Liability*

Generally, a corporation purchasing the principal assets of another corporation does not assume the seller's liabilities “unless (1) there is an express or implied agreement of assumption, (2) the transaction amounts to a consolidation or merger of the two corporations, (3) the purchasing corporation is a mere continuation of the seller, or (4) the transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the seller’s debts. [Citations.]” (*Ray v. Alad Corp.* (1977) 19 Cal.3d 22, 28; *Cleveland v. Johnson* (2012) 209 Cal.App.4th 1315, 1326-1327 (*Cleveland*).)

Hancock’s claim is based on the third theory. (*Cleveland, supra*, 209 Cal.App.4th at p. 1327.) “[I]t has long been held that ‘corporations cannot escape liability by a mere change of name or a shift of assets when and where it is shown that the new corporation is, in reality, but a continuation of the old. . . . [T]his [is especially] well settled when actual fraud or the rights of creditors are involved, under which circumstances the courts uniformly hold the new corporation liable for the debts of the former corporation.’ [Citation.] Further, . . . ‘California decisions holding that a corporation acquiring the assets of another corporation is the latter's mere continuation and therefore liable for its debts have imposed such liability only upon a showing of one or both of the following factual elements: (1) no adequate

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<sup>3</sup> Given these restraints on our review, we reject Hancock’s assertion that he should be granted leave to amend if the rulings on the challenged causes of action are affirmed.

consideration was given for the predecessor corporation's assets and made available for meeting the claims of its unsecured creditors; (2) one or more persons were officers, directors, or stockholders of both corporations.' [Citation.]" (*Ibid*, italics omitted.) Neither factor exists here.

The FAC does not allege that any officer, director or stockholder of CATCO has served in one of those capacities at MSC. Campbell is MSC's CEO, but he was a CATCO employee.

In addition, as Hancock concedes in both the FAC and his opening brief, MSC did not acquire all of CATCO's assets. The FAC alleges that with the assistance of Thornton, Farias, Tyler Anderson and others, Chris Anderson "sold assets of CATCO for little or insufficient consideration to unknown third parties," and that "[t]he proceeds of this activity will source trace to the Defendants in varying degrees, according to proof at the time of trial." The FAC does allege that Kelli Anderson and Campbell "stole one or more computers" from CATCO and that MSC is presently using the stolen information to conduct its business. It also alleges that Kelli Anderson took at least \$18,000 in cash from CATCO and that MSC, Campbell, Thornton and Verdi transferred to MSC a \$150,000 contract between CATCO and Hollywood Park Casino.

These allegations do not establish that MSC is a mere continuation of and successor corporation to CATCO. There is no allegation that Kelli Anderson is affiliated with MSC. She may have kept the computers and cash, but even if MSC has those assets and the \$150,000 contract, the FAC alleges that other assets were sold to "unknown third parties." Hancock cites no authority suggesting that a transfer of some of the old corporation's assets to a new corporation results in successor

corporation liability. To the contrary, this theory of liability is based on “the principle that ‘if a corporation organizes another corporation with practically the same shareholders and directors, transfers all the assets but does not pay the first corporation’s debts, and continues to carry on the same business, the separate entities may be disregarded and the new corporation held liable for the obligations of the old.’ [Citation.]” (*McClellan v. Northridge Park Townhome Owner’s Assn., Inc.* (2001) 89 Cal.App.4th 746, 753 (*McClellan*).)

The allegation that “unknown third parties” received at least some of CATCO’s assets is inconsistent with this theory. It is possible these unknown parties have more CATCO assets than MSC. In addition, the FAC seeks both a declaration that MSC is CATCO’s successor corporation and a finding that the co-defendants are “liable for any assets or things of value taken by each one of them from CATCO in derogation of Plaintiff’s rights as a judgment creditor of CATCO.” The only reasonable conclusion from these allegations is that CATCO was dismantled and its assets divided. This is insufficient to state a claim for successor corporation liability against one of the alleged recipients of those assets. (See *McClellan, supra*, 89 Cal.App.4th at p. 753.)

#### *Creditor’s Suit Against Third Party*

Section 708.210 states that “[i]f a third person has possession or control of property in which the judgment debtor has an interest or is indebted to the judgment debtor, the judgment creditor may bring an action against the third person to have the interest or debt applied to the satisfaction of the money judgment.” This is known as a creditor’s suit. (*Wanke, Industrial, Commercial, Residential, Inc. v. AV Builder Corp.*

(2020) 45 Cal.App.5th 466, 474.) Service of the summons on the third person defendant creates a lien on the judgment debtor's interest in the property possessed or controlled by the third person. (§ 708.250.) If the judgment creditor establishes that the third person possesses or controls property in which the debtor has an interest, the court should order that such property be applied to satisfy the creditor's judgment against the judgment debtor. (§ 708.280, subd. (b).)

Respondents argue the alleged "looting" of CATCO's assets by its former employees, directors, officers and shareholders is insufficient to support the allegations that certain assets are within MSC's possession and control, including the computer or computers allegedly stolen by Kelli Anderson and Campbell, the \$18,000 stolen by Kelli Anderson and the \$150,000 contract stolen by MSC, Campbell, Thornton and Verdi. While this may be true as to the cash, the FAC alleges that Campbell, Verdi and Thornton -- former CATCO employees who now work for MSC -- are "utilizing CATCO assets, including trade secrets, proprietary information and intellectual property," "making the same products as CATCO, with assets looted from CATCO," and "marketing and selling to customers of CATCO, which are also part of Plaintiff's Collateral."

We conclude these allegations are sufficient to state a claim for relief under section 708.210. As the judgment creditor, Hancock has adequately pled that a third person (MSC) has possession or control of property in which the judgment debtor (CATCO) has an interest. (See *id.*) We therefore reverse the judgment as to this claim.



## DISPOSITION

The judgment of dismissal is affirmed in its entirety as to Campbell. The judgment of dismissal as to MSC is affirmed on all causes of action but the third cause of action for creditor's suit. The judgment is reversed as to that cause of action and the matter is remanded to the trial court for further proceedings on that claim. Campbell is entitled to his costs on appeal. In the interests of justice, Hancock and MSC shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Jeffrey G. Bennett, Judge  
Superior Court County of Ventura

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The Judge Law Firm, James A. Judge and David  
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